

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE MINNESOTA BOARD OF NURSING

In the Matter of the Nursing License
of Darryl J. Thomas, R.N.

FINDINGS OF FACT,
CONCLUSIONS AND
RECOMMENDATION

License No. 108117-0

The above-entitled matter came on for a prehearing conference before Administrative Law Judge Barbara L. Neilson of the Minnesota Office of Administrative Hearings at 1:30 p.m. on April 8, 1997, at the Board of Nursing Office in Minneapolis, Minnesota. Ernesto L. Chavez, Assistant Attorney General, 525 Park Street, Suite 500, St. Paul, Minnesota 55103-2106, appeared on behalf of the Review Panel of the Minnesota Board of Nursing ("the Board"). There was no appearance by or on behalf of the Respondent, Darryl J. Thomas, R.N. The record closed on April 10, 1997, upon receipt of an affidavit filed on behalf of the Board.

This Report is a recommendation, not a final decision. The Board of Nursing will make the final decision after a review of the record which may adopt, reject or modify the Findings of Fact, Conclusions, and Recommendations contained herein. Pursuant to Minn. Stat. § 14.61, the final decision of the Board shall not be made until this Report has been made available to the parties to the proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Board. Parties should contact Joyce M. Schowalter, Executive Director, Minnesota Board of Nursing, 2700 University Avenue West, Suite 108, St. Paul, Minnesota 55104, telephone number 612/642-0567, to ascertain the procedure for filing exceptions or presenting argument.

STATEMENT OF ISSUE

The issue in this contested case proceeding is whether or not disciplinary action should be taken against the R.N. license of the Respondent on the grounds set forth in Minn. Stat. §§ 148.261 and 148.265 (1994).

Based upon all of the proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. The Notice of and Order for Prehearing Conference and Hearing in this matter was served upon the Respondent on March 4, 1997, and again on March 7, 1997, by regular and certified U.S. mail addressed to Respondent at 2515 Blaisdell Avenue, Apt. 308, Minneapolis, Minnesota 55404, and 2515 Blaisdell Avenue South,

Apt. 308, Minneapolis, Minnesota 55404 These addresses are the last known addresses for the Respondent on file with the Board of Nursing.

2. On March 10, 11, and 12, 1997, counsel for the Board received all eight envelopes back from the U.S. Post Office stamped "Return to Sender, Attempted Not Known." No one signed to accept the notices served by certified mail and there was no other indication that the notices had been received or accepted by Respondent.

3. The Notice of and Order for Prehearing Conference and Hearing served on the Respondent contained the following informational notice in the paragraph ordering the prehearing conference:

Respondent is urged to attend; failure to do so may prejudice Respondent's rights in this proceeding and any subsequent proceedings related to this matter, may result in the allegations contained herein being taken as true, and may be the basis for disciplinary action against Respondent.

4. The Respondent did not file any Notice of Appearance with the Administrative Law Judge or make any prehearing request for a continuance or any other relief. The Respondent did not appear at the prehearing conference scheduled for April 8, 1997, or have an appearance made on his behalf.

5. Because the Respondent failed to appear at the prehearing conference in this matter, he is in default. Pursuant to Minn. R. 1400.6000 (1995), the allegations contained in the Notice of and Order for Prehearing Conference and Hearing are hereby taken as true and incorporated into these Findings of Fact.

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS OF LAW

1. The Minnesota Board of Nursing and the Administrative Law Judge have jurisdiction over this matter pursuant to Minn. Stat. §§ 14.50, 148.261, and 214.10 (1994).

2. The Board of Nursing has given proper notice of the hearing in this matter and has fulfilled all relevant substantive and procedural requirements of law or rule.

3. The Minnesota Board of Nursing has the authority to take disciplinary action against registered nurses, including the Respondent, under Minn. Stat. §§ 148.261 and 148.262 (1992).

4. Minn. Stat. § 148.261, subd. 1 (1994), provides, in pertinent part, as follows:

The board may deny, revoke, suspend, limit, or condition the license and registration of any person to practice professional or practical nursing under sections 148.171 to 148.285, or to otherwise discipline a licensee

or applicant as described in section 148.262. The following are grounds for disciplinary action:

* * *

- (5) Failure to or inability to perform professional or practical nursing as defined in section 148.171, paragraph (3) or (5), with reasonable skill and safety, including failure of a registered nurse to supervise or a licensed practical nurse to monitor adequately the performance of acts by any person working at the nurse's direction.

* * *

- (8) Actual or potential inability to practice nursing with reasonable skill and safety to patients by reason of illness, use of alcohol, drugs, chemicals, or any other material, or as a result of any mental or physical condition.

* * *

- (17) Violating a rule adopted by the board, an order of the board, or a state or federal law relating to the practice of professional or practical nursing, or a state or federal narcotics or controlled substance law.

* * *

- (21) Making a false statement or knowingly providing false information to the board, failing to make reports as required by section 148.263, or failing to cooperate with an investigation of the board as required by section 148.265.

* * *

5. Pursuant to Minn. Stat. § 148.265 (1994), "[a] nurse who is the subject of an investigation by or on behalf of the board [of nursing] shall cooperate fully with the investigation. Cooperation includes responding fully and promptly to any question raised by or on behalf of the board relating to the subject of the investigation and providing copies of patient or other records in the nurse's possession, as reasonably requested by the board, to assist the board in its investigation and to appear at conferences and hearings scheduled by the board"

6. The rules of the Board of Nursing require licensees to notify the Board of a change of address as soon as possible. Minn. R. 6310.3300, subp. 2 (1995).

7. The Respondent is in default herein under Minn. R. 1400.6000 (1995) as a result of his failure to appear at the prehearing conference.

8. Under Minn. R. 1400 6000 (1995), the allegations contained in the Notice of and Order for Prehearing Conference and Hearing may be taken as true or deemed proved without further evidence when a party fails to appear at the hearing.

9. Under Minn. R. 1400.7300, subp. 5 (1995), the Board of Nursing has the burden of establishing by a preponderance of the evidence the statutory violations charged.

10. As a result of the Respondent's default, the Board of Nursing has met its burden of proof.

11. The Respondent's conduct as set forth in the Notice of and Order for Prehearing Conference and Hearing and incorporated herein pursuant to Finding of Fact No. 4 violates Minn. Stat. §§ 148.261, subd. 1(5), (8), (17) and (21), and 148.265 (1994).

12. As a result of the statutory violations set forth in Conclusion No. 11, the Board of Nursing has the power to deny, suspend, revoke, or restrict the Respondent's license, or to otherwise discipline him as set forth in Minn. Stat. §148.262 (1994).

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS HEREBY RESPECTFULLY RECOMMENDED that the Board of Nursing take disciplinary action against the R.N. license of the Respondent, Darryl J. Thomas.

Dated this 10th day of April, 1997.

BARBARA L. NEILSON
Administrative Law Judge

Reported: Default.

NOTICE

Pursuant to Minn. Stat. § 1462, subd. 1, the Agency is required to serve its final decision upon each party and the Administrative Law Judge by first-class mail.